IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

WEDNESDAY, THE 27TH JUNE 2007 / 6TH ASHADHA 1929

WP(C).No. 13283 of 2007(F)

OS.1460/2003 of III ADDL.M.C.,TRIVANDRUM
.....

PETITIONER:

JUSTIN F.ROZARIO, TC.NO.34/1613,
KOCHUTHOPU, VALLAKADAVU,
THIRUVANANTHAPURAM.

BY ADV. SMT.S.CHITHRA
SRI.A.S.BRIJESH

RESPONDENTS:
----

1. **ELIAMMA PEREIRA, 13, JALAN GOVISEK,**
   SINGAPOR, MUHAMMA, MOLI COTTAGE,
   T.C.NO.45/36,VALAKANNI JUNCTION,
   THIRUVANANTHAPURAM.

2. **PEROERA NAZARETH ZAVIER,**
   RESIDING AT -DO-.

BY ADV. SRI.K.B.PRADEEP

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 27/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: COPY OF THE IDENTITY CARD ISSUED BY THE ELECTION COMMISSION OF INDIA DTD. 04/09/1997.

EXT.P2: COPY OF THE PAGE OF THE VOTERS' LIST OF THE TRIVANDRUM WEST ASSEMBLY CONSTITUENCY IN THE YEAR 2007 SHOWING THE NAME OF THE PETITIONER AS SERIAL NO.218.

EXT.P3: COPY OF THE INCOME CERTIFICATE ISSUED BY THE VILLAGE DTD. 02/02/2007.

EXT.P4: COPY OF THE RESIDENTIAL CERTIFICATE ISSUED BY THE TRIVANDRUM CORPORATION DTD. 06/02/2007.

EXT.P5: COPY OF THE ADDRESS PAGE OF THE PASSPORT OF THE PETITIONER ISSUED ON 24/06/1994.

EXT.P6: COPY OF THE PAGE OF THE S.S.L.C.HOOK SHOWING THE NAME & ADDRESS OF THE PETITIONER.

EXT.P7: COPY OF THE REVIEW PETITION E.A.NO.477 OF 2007 DTD. 10/04/2007.

EXT.P8: COPY OF E.A.NO.498 OF 2007 DTD. 10/04/2007 FILED BY THE PETITIONER SEEKING TO RE-OPEN THE CASE AND PERMIT HIM TO ADDUCE EVIDENCE.

EXT.P9: COPY OF PETITION FOR KEEPING IN ABEYANCE THE ORDER OF DELIVERY WAS ALSO FILED AS E.A.NO.476/2007 DTD. 10/04/07.

EXT.P10: COPY OF WRITTEN STATEMENT IN CONNECTED O.S.NO.1744 OF 2000.

EXT.P11: COPY OF THE CHIEF EXAMINATION AFFIDAVIT OF THE 2ND RESPONDENT.

EXT.P12: COPY OF THE E.P.NO.85 OF 2006.

EXT.P13: COPY OF E.A.NO.81 OF 2007.

/TRUE COPY/

KSS

M.N.KRISHNAN,J

W.P.(C) NO.13283 of 2007

Dated this the 27th day of June, 2007

JUDGMENT

This writ petition is filed to issue a writ of prohibition or any other appropriate writ prohibiting the Munsiff Court, Thiruvananthapuram from proceeding with execution of the decree in O.S.1460/2003 which is a nullity.

2. Heard the counsel appearing for both sides. The decree in O.S.1460/2003 is one for recovery of possession of the property on the strength of title from the defendant in that suit. The contention of the writ petitioner is that even in the written statement filed in that case the possession of the writ petitioner is not made mention of, and therefore, the decree passed by the court below is a nullity. When the decree was put in for execution, the writ petitioner filed an application Ext.P13 to conduct an enquiry as to his right. It is seen from the petition itself that it is filed under Order XXI of the Code of Civil Procedure and he has specifically classified himself is an obstruction petition. When a delivery is attempted to be resisted or obstructed by a person and he files an application, the procedure for determination of

the same is embodied in Order XXI Rule 97 to Rule 106 of the CPC. Under Order XXI Rule 101, all questions relating to title, interest and possession is to be adjudicated by the court as if it is a suit and by virtue of Order XXI Rule 103, it will have the effect of a decree and it is an appealable decree. Suppose the party fails to prosecute the matter and wants to setting aside the order passed, then the stipulation is there under Order XXI Rule 106. It is true that a decree obtained by one person against the defendant will not be binding on a third party. When the third party comes to the court and seeks the help of the court in determining his right over the property, he is bound by the statutory provisions of the CPC under Order XXI. Therefore the contention that the decree obtained by the plaintiff against the defendant is a nullity cannot be accepted for a minute. The present writ petitioner, instead of properly prosecuting the applications, failed to participate in the proceeding, and therefore, his petition was dismissed for non-prosecution and even then instead of resorting to an application under Order XXI Rule 106 of the CPC, he moved some applications for review of the order and I am informed that those applications also stand dismissed. So as on today, the petition filed by him for adjudication of his right stands dismissed and he has not filed any appropriate application before the competent court to get it

restored or preferred an appeal against that order as contemplated under Order XXI Rule 103 CPC. So when there are specific statutory provisions enabling the party to have redressel of his grievance and when he fails to do so, this court under Article 226 or 227 cannot invoke any inherent jurisdiction to give a remedy to the party. Therefore, the writ petition lacks merit and it is dismissed. This will not debar the writ petitioner from moving appropriate application before the appropriate authorities for redressel of his grievance, if any. The delivery of the property shall stand deferred by a week so as to enable the writ petitioner to take appropriate steps to ventilate his grievance in accordance with law.

M.N.KRISHNAN, JUDGE

css/